

Comparison of Claim 1 of the Martin '982 Patent and Claim 104 of the Leithem Application

Claim 1 Martin '982 Patent	Claim 104 Leithem '585 Application
1. A personal hygiene article for absorbing fluids, the article comprising: at least one fluid permeable topsheet layer and at least one substantially fluid impermeable backsheet layer; and an absorbent sublayer material interposed between the topsheet layer and the backsheet layer, the sublayer material containing at least about 10 wt. % of fluffed wood fiber pulp comprising base-treated and dry-shredded wood fiber pulp having a pre-poured saturated drainage (PSD) capacity of greater than 400 mL.	104. An absorbent personal hygiene device comprising: a layer that allows liquid to pass, a water barrier sheet, an absorbent core interposed between said layer and said sheet, the absorbent core containing at least about 25% of fluffed wood fiber pulp, wherein said fluffed wood fiber pulp comprises wood fiber pulp that has been: cold caustic extracted and fluffed by mechanical action.

Applicants note that the wood fiber pulp in claim 1 of the Martin '982 patent is "dry-shredded" while the wood fiber pulp in claim 104 of the Leithem '585 is "fluffed." This is not a patentable distinction. As stated by the inventors during the prosecution of the parent of the Martin '982 patent, "one skilled in the art of pulp processing would recognize the phrase 'fluffed pulp' to mean a product consisting of unbonded wood pulp fibers which is produced by dry shredding wood pulp in either web or sheet form." Martin '159 patent, July 16, 1997 Amendment Under 37 §1.116, p. 3. A copy of this amendment is attached as "Exhibit E".

Applicants also note that claim 1 of the Martin '982 patent includes the limitation that the pre-poured saturated drainage (PSD) capacity of the base-treated and dry-shredded wood fiber pulp is greater than 400 mL. This is not a patentable distinction because the Martin '982 patent reports that a PSD of "430 ml" was achieved even when the pulp was not treated with any base at all. Martin '982 patent, Table 1, col. 8, line 58.